

AN
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TO

Such Objections as were made by some
COMMONERS of *Lincoln-shire*;

AND

Presented to both Houses at the first sitting
of this PARLIAMENT;

AGAINST

ROBERT, Earle of *LINDESEY*,
and his Participants:

Concerning the Draining of those Fenns which
lye between *Lincolne, Berne, & Boston*.

Set forth by Sir *Will: Killigrew*, Knight.



LONDON,
Printed for the Author. 1647.



The OBJECTIONS.

1. **T**hat these said Fennes did not need to be Drained.
2. That the Commissioners did proceed by view, and not by Iury.
3. That the Commissioners were Parties interess'd with the Earle.
4. That the Countrey was defrauded by giving the Earle too much Land for his Contract.
5. That the Earle did give some of those Lands unto Great men for gratuities.
6. That the Earle hath taken more Land from the Countrey, then his proportion.
7. That the Earle hath taken the best of the Fennes for himselfe, and left the worst for the Commoners.
8. That the Earle hath not performed his Contract, by draining those Fennes sufficiently.
9. That the Earle did fetch up some of the Commoners by Purseuants, and by Warrants from the Councell-Table, and did imprison others.



An Answer to such Objections as were
made by some Commoners of Lincoln-
shire, &c.

1. Obj. **T**hat these Fennes did not need to be drained.

Ansiv. 1. It appeares upon Record, the Commissioners of Sewers of those parts, with the Countrey, did intend, and did endeavour (in the 34 of *Henry* the 8th, and in the 17th of *Elizabeth*) to draine the same Fennes which the Earle hath now drained; and did proceed therein as the Earle hath now done.

2. It appeares by a letter signed by Sir *Anthony Earbye*, and M. Serjeant *Callis*, with divers other Commissioners of Sewers, and Justices of Peace in those parts, that the said Fennes did need to be drained: For by their Letter they informe His Majesty, that the Fennes of those parts were annoyed with waters, which for the good of the Countrey they desire His Majesty might be drained: to which end they are suitors, that the King would recommend some Person who should undertake the draining thereof, as a worke honourable and profitable for the Commonwealth.

3. The KING recommends *ROBERT* Earle of *LINDESEY* unto the Commissioners; who was accepted for undertaker at a publique Session of Sewers

at Sleford in the face of the whole Countrey ; where^{the} ~~the~~ ^{the} Argument was, what quantity of Land they should contract with the Earle for, and on what termes, but no question was ever made whether those Fennes did need to be drained. The whole Assembly seemed as eager to have the Fennes drained, as the Earle was to undertake the worke : and after some debate at severall meetings about the proportion, the Earle demanding 30000 Acres : at last the Commissioners proffer him 24000 Acres, which he accepts with the generall approbation of every Commissioner present : and acclamations of joy from the Commoners, who did wait on the Earle to his lodging from the Church, with loud prayers for the good successe of his worke. By this it appears that the said Fennes did need to be drained. This contract was made between the Earle and the Countrey, by thirty two Commissioners : who would not have made this contract if the draining had not been necessary.

2.Obj. *That the Commissioners which laid the Taxes, and did adjudge the Lands to the Earle, were Parties interess'd with him.*

Answ. That when the contract with the Countrey was made, no Commissioners were interess'd, nor could be, because the Earle had then no interest himselfe : but after the worke was begun, three or foure of the Commissioners did become Adventurers with the Earle, and did put in their monies for their owne Fennes : They paid forty shillings *per* Acre, at which rate the Earle offered to admit all that would of the Countrey to adventure with him, which was done by publique Proclamation. But those Fennes were then so drowned, and of so little worth, and the worke so hazardous, that none would purchase any of the Lands allotted

lotted to the Earle at forty shillings the Acre, besides Sir Edward Heron, and Sir John Brooke (since Lord Cobham) who are the Commissioners excepted against : where as the Commoners might well wish that more Commissioners had been of their mind, who no doubt would be carefull to see that the Earle should performe his worke according to his contract, for their owne sakes.

3. Obj. *That the Commissioners did proceed to Taxe, and to adjudge the Lands by view, which they should have done by Jury.*

Ans. That Juries are in this Case only to informe the Commissioners, and that the Commissioners being themselves sworne, may by their owne view be better informed, then by the eyes of others, as has been usually done in former times ; and no doubt the integrity of such men of such quality as are trusted to be Judges, may be trusted to judge upon their owne view, as well as on the view of meane and ignorant men ; for of such are most Juries made. I have here inserted the Names of the Commissioners that laid the first Taxe of 13s 4d an Acre upon the Earles Fennes : Many of them being those that did view the Fennes without a Jury ; because in a businesse of such consequence they would trust no eyes before their owne.

The Earle of Lindsey

Earle of Lincolne

Lord Willoughby

Sir Henry Fines

Sir Rob. Killigrew

Sir William Armyn

Sir Edw. Heron

Sir John Munson

Sir John Brooke

Sir Ham: Whichcott

Sir John Browne

Sir Christop. Wray

Sir

Sir Ralph Maddison	Robert Tredway
Sir Will. Quadring	John Bassett
Sir Jervace Scroop	Robert Marshall
Serjeant Callis	Maioir of Lincolne
Doct. Farmery	Rich. Westland
Wil, Langton, Esq.	Maioir of Boston
William Dallison	John Hobson
Robert Long	Robert Boswell
Edw. Skipwith	Tho. Haughton
John Brownelowe	George Thorold
John Burrell	Josua Whichcott
Robert Caydon	Rich. Barefont
	George Smith.

The Question now is, whether these Commissioners may make Decrees upon their owne view as well as on the report of a Common Jury? Which we leave to the judgement of the Parliament.

4 Object. *That the Country was defrauded, by giving the Earle too much Land for his Contract.*

Ans. That the 24000 Acres passed, and Decreed unto the Earle, can be justly valued but at the price the said Lands bore at that day, which was forty Shillings an Acre to be sold. So that 48000 li. was then the value of the 24000 Acres decreed to the Earle; then which the Earle hath expended a much greater Summe in his workes, and therefore the Country was not defrauded as is objected. But some men do looke on the Earles Land now he has made it worth twelve Pounds an Acre, and will

will not consider his hazard that has brought to passe what many before him have been ruined by attempting, nor consider his monies taken up at use, or on harder termes to do his whole worke; but in mercy to the poore Commoners will thinke them abused, and not once consider that their Commons now remaining to them, are worth at this day ten Shillings the Acre, which never did yeild twelve Pence the Acre before the draining. Another kind of men there are too, that would repay the Earles charges, and resume the Lands; but when those men shall examine his charges they will be of another mind, and find that those Lands have been purchased by the Earle and his Participants at too deere a rate to be re-purchased. Methinks such men may with the same justice purchase all the *East India* Ships at their returne for the same money Merchants set them forth: 'twill be a good course to encourage Trade, and much for the publique good to destroy all activity in ingenious Men, to give the reward of their industry and hazard unto idle Drones: such an example of injustice I conceive will in some kind concerne every mans estate that by providence and industry is better then when 'twas first purchased. Now I have argued against this injurious project, I will be glad to relinquish all my interest in the Fennes, for the money which these Fennes have cost me, all things being justly considered.

5. Object. *That the Earle hath given great part of his Fenne-Lands unto great men for gratuities.*

Ans. That the Earle might dispose of his Lands as he pleased; whether he gave them, or sold them, concerns not the draining, nor those that adventured with the Earle: if any injustice were done, let it appeare,
and

and let them answer it, that it particularly concerns.

6. Object. *That the Earle hath taken more Land from the Commoners then his proportion.*

Ans. That the Lands were laid out by Sworne Surveyors, and that the Drainers are desirous to have the Lands a new surveyed, and have often made proffer to beare the charge, and to make restitution in case they have erred: ~~if~~ the Commoners will do the like in case it appears they have complained without a cause: but the Commoners have hitherto rejected it, and only desire to clamour, well knowing that the Lands are justly measured, and allotted unto the Earle.

7. Object. *That the Earle hath taken the best of the Fenues to himselfe, and left the worst unto the Commoners.*

Ans. This Objection made a great noise in the eares of all honest men, and did procure the Commoners many favours. And about this there has been 100 Witnesses sworne *pro & con*: and at severall hearings in the Lords house with Counsell on both sides this businesse hath been debated; as also before a Committee of the House of Commons it hath been divers daies heard. After much trouble and charge at a full hearing in the Lords House, the Earle and his Participants did proffer to exchange all the Lands allotted unto them, and to accept of their proportion in some other place, where the Commoners should like best, thinking this would give satisfaction; But those that complained refused to accept what they so violently sought; by which the Lords saw that they only sought occasion of clamour, and had no just cause to complaine, their Petition was therefore cast out of the Lords House, and the possession settled unto the Earle. And if yet the Commoners do like the Drainers Land better

better then their owne, 'tis still at their choise ; so they will observe the contract to make the Earles proportion part of every Fenne, and the whole lying in a straight tract according to contract, that the Draines may not be crooked, which will not thend to the worke of draining ; if they shall refuse this exchange, 'tis cleere that the Earles Land is not the best of the Fennes, and the Country not injured : The truth is, all judicious men of those parts do know the Commoners will as soone eate their Land as make this exchange with the Earle and his Participants, whose allotment was the very sinke, and pan of all the Fennes, and ever most drowned ; and besides, lying in the midst of all the Fens, farthest from all their Towns, &c so leaving all their Commons as most commodious for them next unto their houses : which doth avoid all trespasses that must dayly happen, if their Commons and the Earles severalls were intermingled. It will appeare upon the Mapp, that the wit of man cannot lay out the Earles Lands more advantageously for the Country then now it is. Againe I say, themselves now an exchange is offered, dare not accept it.

8. Object. *That the Earle hath not performed his contract by draining the said Fennes sufficiently.*

Answer. If this were true, they might have laid by all their unnecessary clamours ; for the Earle by his contract is to have no Land unlesse he performe his worke according to his Contract. To justify which, the Earles workes were severall daies viewed by the Commissioners themselves, who rood with divers of the Commoners in publique from place to place to heare all objections could be made against the said workes ; and after a due consideration, they did judge the Lands drained, and the

workes done according to the Earles Contract. Now the question is whether this judgement and decree of the Commissioners shall be of force, or the opinions of the Plaintiffes in their owne case? But lest some men may thinke that Commissioners may be perjur'd, or mistaken, the Drainers have cleere arguments to justify this judgement of the Commissioners, and to dash the scandalls of their accusers.

1. That these Fenne-Lands allotted to the Earle, doe beare Coole Seed, Rape Seed, and all kind of winter Corne; which could not be, unlessse those Lands were sufficiently drained,

2. The Commons which belong unto the Country, by the Earles contract ought to be made either Meddow, Arrable, or Pasture, and accordingly are as good pasture, and as dry as Commons can be: and if they were inclosed in severals, as the Earles Lands are, they would beare as good winter Corne as his Lands do; but it is their owne worke to inclose their Commons and no part of the Earles contract.

3. It hath been proved at a Committee of the House of Commons, by sufficient Witnesses on Oath, and also in the Lords House at severall hearings, that the said Fennes in generall were *communibus Annis* worth but twelve pence the Acre before the draining, and that now by the draining they are so much improved, that the Earle did offer the Commoners at the Lords Barre to become Tenant to all the common Fennes to them remaining at ten Shillings the Acre *per annum*, and to take a Lease for 100 yeares, giving them security in the City of London for their Rent, which they refused, and by refusing shewed they valued their Fennes to be more worth.

So that the Common Fennes improved from one shilling to ten, will prove to have needed draining, and to be sufficiently drained.

4. The Drainers have ever desired to have a Committee sent from the Parliament to view their workes, and to judge if the Earle have performed his contract, and deserved his reward, but the Commoners have ever by their power hindred it. 'Tis now hoped that judicious men will not hearken unto their clamour and noise, but looke on them as ungratefull men that would ruine those that have so much enriched them; as men that do refuse to accept what they seeme to desire; as men that can prove nothing that they accuse the Drainers of; and as men not worthy of favour or countenance, that have put both Houses of Parliament to so much trouble upon unjust complaints.

9. Object. *That the Earle did fetch up many poore men by Pursuivants, and did imprison them by warrants of the Councell-Board.*

Ans. That in those daies the whole Kingdome did submit unto the Councell-Board warrants; and that when it shall be shewed upon what cause that proceeding was used, it is hoped that those complaints will prove no great crimes; for if any fault were in the Earle, 'twill not be such as ought to forfeit his Lands, nor to ruine all those that have adventured with him, if by any such mistaken course any man have just cause to complaine. Neither will this excuse the Riot for which he was so punished, though it may now be a fault in those that punished him that way. It clearly appears that no wilfull acts has been by the Drainers done to the prejudice of any man, and then 'tis hoped that if any accidentall error have

been committed ; it may be remitted, or dispensed with upon a moderate satisfaction, rather than to destroy so many innocent persons as have interest with the Earle, because those that managed the Earles businesse did mistake in the way of punishing such Rioters.

To conclude, It appears that the draining of Fennes is beneficiall to the Common wealth, by the Antiquity, and Authority of the Commission of *Sewers*, and by several Statutes encouraging men to undertake such works, and granting immunities to such as should adventure therein: it appears also that works of the same nature, with this of the Earle of *Lindesies*, (as that of *Levels*, and that of *Tindals*) have been approved, and confirmed by former Parliaments, which did encourage the Earle and his Participants in their worke.

And lest any man may not clearely see the state of the case in equity, between the Earl of *Lindesey* and the complaining Commoners, I have thought fit to shew it here: There is a common Fenne containing twelve hundred Acres, worth *per annum* twelve pence the Acre before the draining. The Earle hath 300 Acres of this Fenne as a fourth part allotted him for draining the whole: And he by draining the said Fenne, brings the Land from twelve pence an Acre, to be worth ten Shillings an Acre: So then the question is, whether the nine hundred Acres remaining to the Commoners now worth ten Shillings an Acre, be better for them then the twelve hundred Acres was at twelve pence the Acre before draining? That is, whether 450 *li.* be more than 60 *li.* and thus cleare is the benefit which these complaining Commoners doe receive by the Earles draining: besides what the Commonwealth gains by the Earles 4th part allotted him, which is
c care

cleare profit. Though 'tis no wonder to find malicious and envious spirits ever ready to defame the best proceedings of the best men, 'tis very strange to see such injustice, and so high ingratitude countenanced by any man of worth.

It may now be time for the Drainers, and all that are interestted with the said Robert Earle of Lindesey, to shew the hard measure they have received from these Commoners, and from their Abettors.

1. **VV**hen the Earles workes were working, some menthat maligned the Earles undertaking did set on poore men to cut the bankes in the night, which did much hinder the worke, and much encrease the charge.

2. When the Earle had one yeare possessed 14000 Acres of the Lands decreed unto him, and that his Participants had built great houses, and planted, and plowed much Land, some of the poorer sort of men were againe set on to breake the Sluces in the night, and to cut the bankes, by which the Drainers Corne then growing was destroyed, to the value of ten thousand pounds, and for these men did the Purservants (formerly mentioned in the ninth Objection) come downe.

3. About two yeares after the Earle had possession, a great multitude of the poorest Commoners of other remote Fennes were brought and encouraged, and did pull

drowne all the Drainers houses, throw out all their Tenants, some into the Rivers, others were wounded and beaten, and driven away : And thus they did destroy all their Plantations, their Seed, and Corne, to the value of twenty thousand Pounds sterling, and by force tooke possession of all the Earles Lands.

4. The Commoners adjacent did joyne with these Rioters, and have now fixe yeares enjoyed the said 14000 Acres belonging to the Drainers ; which at ten shillings an Acre amounts unto neere forty thousand Pounds sterling, to which Land they have no right. Thus the whole dammages done by the Commoners to the Earle and his Participants doth amount unto neere seventy thousand pounds sterling.

5. 'Tis hoped that the Parliament will take notice that all these Riots were committed, the Parliament sitting, and before the War began, and that most of this was done in disobedience to many Orders from the Lords House, before whom all the disputes had been often heard; and also in contempt of an Order to the Lord *Willoughby*, Lord Lieutenant of that County, who was with the Sheriffe and the Justices, to quiet the Possession unto the Earle and his Participants, untill the Parliament should further determine of the matter, and also in contempt of the directions from the House of Commons by their Speakers Letter ; and above all, in scorne to the Committee of the House of Commons, which was granted upon the Commoners Petition, and before whom the businesse was divers daies heard, and debated by Counsell on both sides, and a hundred witnesses sworne ; but while this sute depended, the Commoners waved the judgement of the Committee sitting, and of the Parliament also,

also, and became their owne judges in their owne case, to a very evill example.

And now I have said all these things by way of justification of the Drainers proceedings, and recrimination of the Country People; 'tis not without good ground beleaved by us that are interested, that if the whole businesse were brought to a due hearing, and examination, it would appeare all these complaints of the Commoners the notorious Riots that they have committed, and the Losses which the Drainers have sustained, have neither proceeded from any injustice done to the people, nor yet from any dislike in them arising from any other ground, but meerely from the malice of some rich ones, and the unjust desire of gaine in others instigating the Commoners to it: For there are Grasiers of the high Countries, men of great substance, who have no right of Common in these Fennes; yet doe under colour of some poore Commoners Title put in great herds of Cattle, eating up the Pasture from the Poore; and these men fearing by the Drainers re-possession they must bee put by this profit, have set on the Commoners to make these clamours. And how can it be thought that the Commoners should oppose the draining by which they have so great benefit, and which was at first so pleasing to them, that many thousands of the Commoners did worke two yeares in the draines, and thousands of them did since gaine very well by helping in the Drainers first Harvests, as also by plowing, and Renting of the Earles Lands; If therefore a hearing were granted in Parliament, no doubt but it would appeare who did set on these ignorant poore people to make this destruction; but we suspect a hearing is cryed downe for no other cause, but for feare lest the
Commoners

Commoners should peach those that set them on these Riots. The Drainers therefore cannot choose but earnestly sollicite a hearing with their opposers, assuring themselves they shall not only be acquitted by all just Judges of those imputations of being Court Projectors, and Opposers of Common People, but be re-instated in their Lands, with some publique acknowledgement and thanks for their good service done their Country; after the custome of other Nations who were wont to decree Statues and Honorary Inscriptions to well deserving Subjects: **A Remuneration** which their enemies themselves owe them, the Drainers having performed all contracts to them: I say not, according to the strictest Law, but the strictest rule of Equity & Conscience, as if they had bin ambitious rather to set out a Pious Act to the world for an example, then to performe a civill Compact only according to the Obligation of justice.

FINIS.
